G. R. S. III—1] 1910.

GENERAL AND REVENUE SECRETARIAT.

(Courts)

NOTES.

File No. 237 C9

FILE HEADING.

Memorial of Venkala, accused in Bangalore Sessions Case No. 15 of 1919-19 -

From

The Registrar, Chief Court of Mysore

No. 237 C.R. Dated 11/4 1920 Received on 16/4/1920

Diary No. 8[illegible]	Enclos. Copies.	Serial No. 1

BRIEF ABSTRACT OF LETTER.

Forwards a memorial addressed to His Highness the Maharaja by Venkala [illegible] accused in Bangalore Sessions Case No. 15 of 1919 [illegible] the records of the Case praying for Mercy -

NOTES AND ORDERS.

Submitted for orders

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vide Cl: 244/19.

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NOTES—First Sheet.

1957

No. 997 Enc. Six files of two records.

Bangalore, 19 20

Dated 1st April 1920.

From

THE REGISTRAR OF THE

CHIEF COURT OF MYSORE.

To

THE CHIEF SECRETARY TO GOVERNMENT, OF
H. H. THE MAHARAJA OF MYSORE,
GENERAL AND REVENUE DEPARTMENTS. BANGALORE.

Sir,

I am directed to forward a memorial addressed to His Highness the Maharaja by Venkata 2nd accused in Bangalore Sessions Case No. 15 of 1918-19 on the file of the Sessions Judge of Bangalore Division and appellant in Criminal Appeal No. 33 of 1919-20 on the file of this Court.
Criminal Referred Case No: 2 of 1919-20

The entire record of the case is herewith forwarded.

I have the honor to be,

Sir,

Your most obedient servant,

Registrar.

SG.

GPB—1,000—16-8-12

Sworn before me

Chief Jailor.

D. C. Jail.

24/2/20.

IN THE CHIEF COURT OF MYSORE AT BANGALORE.

Thursday the 5th day of February 1920.

P R E S E N T:

MR. JUSTICE K. S. CHANDRASEKHARA AIYAR, CHIEF JUDGE

and

MR. JUSTICE C. S. DORASWAMI IYER.

Petitions of Criminal Appeals Nos.32 and 33 of 1919-20/Criminal Referred Case No. 2 of 1919-20 against the conviction and sentence by the Sessions Judge of Bangalore Division under section 302 of the Indian Penal Code in Bangalore Sessions Case No.15 of 1918-19.

In Cr. A. No.32 of 1919-20

Appellant:-- Ranga.
(1st Accused)

IN CR. A. NO.33 of 1919-20.

Appellant:---- Venkata.
(2nd Accused).

J U D G M E N T.

MR. JUSTICE C.S. DORASWAMI IYER:--

The two accused Ranga and Venkata, appellants respectively in Criminal Appeals Nos. 32 & 33 of 1919-20 were tried before the Sessions Judge of Bangalore Division

Division, with the aid of assessors for the murder of one Narasa Hanuma under section 302, Indian Penal Code, and were convicted and sentenced to death. The case has come before us on appeal and also under section 374, Criminal Procedure Code for orders as to confirmation of the death sentence.

The facts of the case are fully stated in the judgment of the lower court and it is unnecessary to repeat them. It is sufficient to state that for over a year before the date of the alleged murder, the appellant Ranga with his wife and sister, was living with the deceased as a member of the latter's household in the village of Holerahalli. The deceased had no male issue, and it is in evidence that he either took in adoption or had fostered his brother's son Hanumayya. A daughter of the said Hanumayya was got married to the appellant Ranga. It is stated that about a year or two before his death, the deceased Narasa Hanuma lost his wife and sisters, and being left alone sent for Ranga and his wife to live with him. Ranga had himself a widowed sister to be looked after and she was also taken to live with him in the deceased Narasa Hanuma's house. Just about the same time the abovenamed Hanumayya was also sent for by the deceased and it would appear that he Hanumayya left with his young son some three months prior to the death of Narasa Hanuma. The recorded evidence does not throw any light as to his whereabouts.

Thus at the time of the alleged murder the inmates of Narasa Hanuma's house were Ranga, Ranga's

wife

wife Narasamma (Prosecution 4th witness), Ranga's sister Lakkamma (Prosecution 3rd witness) and her infant son about 3 years old. So far the facts are undisputed. It is also undisputed that the corpse of Narasa Hanuma was found in a deep pit --8½ feet deep by 10 or 15 feet wide-- situated about 2 or 3 furlongs from the village of Holerahalli and about 43 feet off the footpath running between Holerahalli and Rampur. The appellant Ranga is stated to have first discovered the dead body in the pit about 6 P.M. on Friday the 21st March 1919, and furnished information to the Patel at Rampur. This fact is referred to in Exhibit P.4, which is the report sent by the Patel the same evening at 7 P.M. to the Police Station at Dodbelavangala. At the inquest held on the following day certain marks of injury, more particularly described in column 6 of the inquest report were observed. The body was practically nude except for a small piece of langoti tied to a red waist thread found on it. It was noticed at the inquest that the lower part of the face, that is to say the portion from the throat(gomali), from ear to ear as far as the forehead was bereft of skin, and as the skin on the lower part of the neck was found decomposed, it was not possible for the panchayatdars to state exactly what it was due to. Ranga was examined at the inquest and he stated that when the deceased left the house on Wednesday afternoon, he had worn a white Hachada or Dupati, a white turban and a white panchay. These clothes were not found either on the person of or in the pit where the corpse lay. The panchayatdars entertained doubts as to the cause of the death; the body was there-

fore

fore sent to the Sub Assistant Surgeon at Dodballapur for post mortem examination. The Sub Assistant Surgeon observed a cut wound about 4 inches long on the anterior part of the neck cutting the trachea and blood vessels: he also found 'that the skin over the whole face as far as middle of the anterior part of the neck and ears and on the forehead, and on the head as far as the occipital bone was cut and removed.' The Sub Assistant Surgeon was examined as a witness for the prosecution in the Committing Magistrate's Court, but in the Sessions Court he was not called in, his deposition given before the Committing Magistrate being marked as Exhibit P.8 for the prosecution. In his certificate marked as Exhibit P.6, the Sub Assistant Surgeon was of opinion, that death was due to the injuries noted and this he amplified in his evidence by the addition of a further detail that death was due to injuries caused by sharp and blunt instruments. The learned Sessions Judge is of the opinion that the throat of the deceased was cut with the knife article No.I on which mammalian blood was detected by the Chemical Examiner, ---- Vide Exhibit P.3 the Chemical Examiner's Certificate. In the Committing Magistrate's Court the medical witness was not even asked whether the incised wound on the neck could have been caused by the knife article I which was at the time of his examination before the court. Indeed he was not even shown the knife. Nothing more was elicited from the witness than the vague and indefinite statement that 'death was due to injuries by sharp and blunt instruments.' The accused were undefended in the court of the Committing Magistrate and naturally there was no cross-examination. It is to be observed that in the certificate Exhibit P.6, the opinion as originally recorded

by

by the Sub Assistant Surgeon was in accordance with his deposition given in court. It ran thus:--"I am of opinion that death was due to the effects of bleeding from the injuries noted which should have been caused by both blunt and sharp instruments." The District Medical Officer, Mr. D. S. Puttanna, B.A., F.R.C. S. who countersigned the certificate scored off all except the words "death was due to the injuries noted," probably for the reason that from the post mortem appearances indicated in the certificate he was unable to wholly endorse the opinion of the Sub Assistant Surgeon as to the cause of death. The Sub Assistant Surgeon nevertheless stuck to his own theory when he was examined as a witness. Besides the cut wound on the neck it was noticed that the lobe of the right ear was cut away, the sockets of both the eyes were broken at their outer sides, the shoulder blade and several ribs broken and yet the medical witness was not questioned as to whether all or any of these injuries could have been caused, if the murder had taken place in the manner alleged by the prosecution . The head quarters of the Sub Assistant Surgeon is at Dodballapur, within easy reach of Bangalore. No grave inconvenience could have been caused by his absence from Dodballapur for a day and none is alleged. Indeed he came to Bangalore to give evidence before the Committing Magistrate. In these circumstances the courts below would have better exercised their discretion had they, in accordance with the instructions contained in Circular Letter No. ....7.0.....dated ..22nd..July..1887.., issued by this court, secured the attendance of the Sub Assistant Surgeon for examination in the Sessions Court, instead of merely using his vague and

imperfect

imperfect deposition, -- untested by cross-examination, -- under the provisions of section 509 of the Code of Criminal Procedure. In this case the evidence of the Senior Medical officer who has countersigned the certificate would have been of special value seeing that he found himself unable to agree with the Sub Assistant Surgeon on a vital portion of the cause of death. The medical evidence meagre as it is in regard to the existence of the cut wound on the neck is singularly lacking in detail. The trachea and the blood-vessels of the neck are stated to have been cut, but it has not been made clear whether by blood vessels the external blood vessels or the large blood vessels such as the carotid artery and its branches and the internal jugular vein are meant. If the latter, then it seems to me that the external haemorrhage would be so rapid and copious as either to stream down the floor or form a pool of blood on the ground sopping with blood the body and clothes believed to be worn by the deceased at the time of the murder. It therefore becomes very necessary to examine with care and minuteness the prosecution version and the oral evidence regarding the manner in which the wound on the neck is alleged to have been caused.

I believe that the motive for the alleged murder cannot be robbery, because the few articles of comparatively insignificant value worn by the deceased before the murder, with the exception of a pair of small tiny muras worn by the right ear, were all found on the corpse, and as the right ear was found torn away it is not unlikely that the muras on the torn lobe might have

been

been lost with the severed part in the deep pit where the corpse was found or thereabouts. If the cause of the death is the wound on the neck and not the other injuries referred to by the medical witness then it is clear to my mind that the murder should have been committed at some place other than the big pit where the body was found because it was observed at the inquest that there were no marks of blood or struggle in or about that halla, and the police inspector examined as prosecution 5th witness stated that there was no blood found anywhere there. The medical evidence, meagre though it be, appears to be on the whole sufficient to hold that the deceased met with his death rather by violence than by accident.

The next and most important question is whether the murder was committed by the appellants.

The learned Sessions Judge is of opinion that the appellants and one Pollesidda taken as an approver and examined as a witness for the prosecution, compassed the murder, all the three being "actuated by avarice to profit from the cash and other properties of the deceased," and that the murder was committed in the house of the deceased on the night of the 19th March last and in the presence of Lakkamma and Narasamma, the sister and wife respectively of the 1st accused Ganga. He believes that after life became extinct all the three persons carried the corpse the same night on a ladder and threw it into the pit where it was found on the Friday following. He thinks that the search and discovery made by the 1st accused were elusive and a mere sham.

It may be noted that the 3 assessors with whose aid the case was tried were unanimously of opinion that the accused were not guilty, though the reason assigned viz. that the 1st accused would inherit the property of the deceased is not in law correct. Perhaps they meant only to state that after the old man's life time the 1st accused and his wife would be practically left to enjoy his properties.

The appels were fully argued on both sides and I have read through the evidence very carefully. I find myself unable to agree with the learned Sessions Judge in respect of most of the grounds on which he has based his conviction of the 1st accused. The principal witnesses against him are his own sister and wife. Ordinarily they would be most reluctant to say anything which would tell against him and yet they are the persons who give the most damaging evidence against him. The wife of course has a divided duty to perform. On the one side there is her husband who is involved in the murder, and on the other the murdered man is her grandfather. Except for the break of a few years when she was living with her husband in his native village her life was spent in her grandfather's place, for about a year or so before the old man's death she was practically the mistress of the house. She was freely confided in and was the custodian of his loose cash. The deceased had none else to care for except her and her husband, and they in their turn had none else to look up to except him. His adopted son is an unsettled itinerant wandering about from place to place. Indeed he went away somewhere some 3 months

before

before the death of the old man. But Lakkamma's position is somewhat different. She is not related to the deceased except through her brother, the 1st accused. She is naturally more attached to her brother, and on that account will be much more reluctant than Narasamma to implicate him. Ordinarily therefore the statements of these two women could not have been made voluntarily and of their own impulses. I feel it imperative, in these circumstances, to scan their evidence with more than ordinary care and attention.

There is one episode in the prosecution story, and in my opinion a very important one, as it has a material bearing on the guilt of the 1st accused, as well as the appreciation of Lakkamma's evidence. Jamedar Narnappa who received the Patel's report Exhibit P.4 on the 21st March at 12 midnight --the hour of receipt is noted as 12 midnight on the report itself--forwarded it to the Inspector at Dodballapur with a special report of his own, Exhibit P.5, dated also the 21st March and timed 12 midnight. In fact both the reports were enclosed in the same cover an sent to the Inspector. The Police Inspector says he received them about 6.45 or 7 A.M. on the 22nd. Dodballapur is about 10 miles from Dodbelamangala. The distance between Dodbelamangala and Holerahalli is less than 2 miles. Exhibit P.5 is an important document written almost simultaneously with the receipt of Exhibit P.4. It is to this effect:-- "The deceased Narasa Hanuma was worth about Rs4000/-. His wife, children and all his nearest heirs are dead. It is ascertained from the people here that

Ranga, the husband of the deceased's foster son's daughter who is referred to in the Patel's report and others murdered him (the deceased) on the night of Wednesday the 19th last being angry that the deceased would alienate his properties, and that to avoid suspicion he (Ranga) pretended to have made a search for the deceased yesterday the 20th that it was absolutely false that the deceased died having fallen into a ditch by the side of the path, as stated in the Patel's report and thatthe report was made after much deliberation on the part of the Shanbhogue and Patel." It is remarkable that the case for the prosecution as put forward in the court has been foreshadowed in every detail in this report, so early as the 21st. The police had therefore a definite theory to start with from the very inception -- a theory which was not the result of any process of deduction, but definitely told by the people of Dodbelavangala. It is to be regretted that the learned Sessions Judge has not even taken a passing notice of this aspect of the matter, indeed the author of this report was not even examined as a witness at the trial. It was left to us, as we thought it necessary to have his 'evidence placed on record.' The following appears from his evidence:--

Question: Who are the persons whom you have referred to as "others" in your report Exhibit P.5?

Answer.--I do not remember their names now, as it is more than 6 months since this occurred. Further pressed thewitness stated "I do not know who the others referred to in Exhibit P.5 were. I did not get

any

any information about their names." Both the answers are not easily reconcilable. Continuing the witness added:--"I got the information mentioned in Exhibit P.5 after I received the Patel's report. I got all the information embodied in Exhibit P.5 within about 10 minutes, in the interval between the receipt of Exhibit P.4 and the despatch of Exhibit P.5. I have not made a report of the information contained in Exhibit P.5 in any diary of mine. I did mention to the inspector orally about the information contained in Exhibit P.5. He asked me who gave the information and I mentioned to him the names of my informants. He did not make any record of it. This was at 11 A.M. or 12 noon at the time of the inquest on 22-3-1919. The persons who gave me information belong to Belavangala and not Holerahalli. None of them was examined either in the Committing Magistrate's Court or in the Sessions Court. They were 3 or 4 that informed me, and they were all in the chavadi. It was on my beat that they gave me the information * * * On the 22nd I gave the names of those persons to the police inspector before the inquest. None of my informants was present at the inquest. I did not take those persons before the inspector. The inspector made no attempt to get my informants. I was present at the inquest. At the time of the inquest no information was received in support of the version contained in my special report Exhibit P.5 * * * The women Lakshmi and Narasamma were not examined at the inquest. I do not know why. It is the inspector that conducted

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the inquest. I went to the house of the deceased on the 22nd after the inquest was over. I did not then make any inquiries of Lakkamma and Narasamma. They were both present in the house then. * * I did make enquiries on the lines contained in my report, of a Bedar, an agasar, and a kumbar of Holerahalli whose names I do not remember. I did not take my informants to the inspector on any date subsequent to the 22nd March and the inspector did not examine any of those persons in my presence at any time." This extract speaks for itself. The inspector went to Holerahalli on the 22nd at about 11 A.M. or so and stopped there till nightfall. At the inquest only the 1st accused Ranga and the approver were examined. The approver gave no information of any value. Ranga said he did not know how the deceased met with his death. The women in the house were not examined. The informants whose names were made known to the inspector, if the jamedar's evidence is true, were not even sent for. Valuable information regarding the murder though forthcoming was not availed of. The verdict at the inquest was that it was not possible to say in what way the deceased met with his death. Even in the First Information Report sent to the magistrate after the receipt at 5 or 6 P.M. on the 23rd of the post mortem certificate, the accused are noted as unknown, Exhibit P.5 is not even referred to in the First Information Report. The case diary of the inspector of the 22nd, in which Exhibit P.5 finds mention was sent with the diaries of the 23rd and 24th, and all of them reached the Superintendent only on the 26th. The

only

only inference that I can draw in these circumstances is that the Inspector either did not receive Exhibit P.5 till after the First Information Report was despatched, or that he did not believe a word of what was contained in Exhibit P.5, so much so that he did not even care to examine the persons on whose information Exhibit P.5 was founded.

The jamedar however would not give up his theory. When left alone between 6 & 9 P.M. on the night of the 22nd, in temporary charge, as it were, of the investigation, he pursued his theory and made enquiries, as he states, of a Bedar, an agasar and a kumbar, all to no purpose. On the 23rd, at about 10 A.M. he met Lakkamma in a tope about 50 yards away from Holerahalli. There was none with her except the police informant Veerabhadrappa. In his presence Lakkamma is said to have given information leading to the unearthing of the crime. She was produced before the inspector the same night at Dodballapur; Both the jamedar and the patel (prosecution 8th witness) took her from Holerahhalli to Dodballapur. The inspector states that when he examined her on the 23rd night she gave information about the murder of the deceased by the two accused and the approver. These three persons were then arrested at 10 P.M. on the 23rd. The other woman Narasamma was examined by the inspector on the 25th at Holerahalli.

Lakkamma, examined as prosecution 3rd witness, stated that on the 19th the 1st accused, Narasamma

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and she herself were sleeping in the nadumane and that the deceased Narasa Hanuma was sleeping in the padsala; at about midnight she heard a gurgling noise, awoke from her sleep and went out to the padsala; it was dark and no lamp was burning. She found Narasa Hanuma lying down on a ladder with his throat cut. The two accused and the approver were seated there. Narasi also came out with her to see what had happened. The witness asked them why they were seated there. Then the 1st accused came and pushed her into the house, i.e. into the nadumane telling her not to meddle in the matter. Similarly Narasamma was also pushed in andthe door was bolted from outside. The 1st accused opened the door only after day break. Apart from the intrinsic improbability of her having been able to see in the dark with no lamp burning, Narasa Hanuma's throat being cut, it appears to me to be quiet unlikely that the women, at any rate Narasamma would have allowed herself to be quietly shut in knowing that her grandfather was stretched out on the ladder with his throat cut. This much is clear that according to the evidence about set out, neither of the women couldhave seen the throat cut or been present at the time of the murder. But later on, inthe course of the same deposition she developed her story and stated that she saw the 2nd accused cut the throat of the deceased, though she did not notice with what he cut. In cross-examination she added that the 2nd accused cut the throat with a knife, but later on contradicted herself and stated that she did not see the 2nd accused cutting the throat of the deceased,

but

but that she saw the corpse laid on the ladder she inferred that the 2nd accused cut the throat, though she did not as a matter of fact see him cut. She added that she saw the knife article I for the first time in the Committing Magistrate's Court. I must confess that is extremely difficult for me to place implicit reliance on the testimony of a witness who makes hopelessly contradictory statements thrice in the course of the same deposition. Then again with reference to the ladder her first statement was that when she came out of the nadumane, she saw the deceased laid on it. In her cross-examination however she said that the 1st accused brought the ladder and that the 2nd accused and the approver placed the corpse on it. Both the statements cannot be true. In another part of her deposition she stated:--

"I saw the 2nd accused cut the throat of the deceased. I did not see with what he cut the deceased. The 1st accused was seated chewing betel leaf and nut! I saw it. He was seated at a distance of 7 feet from where Narasa#anuma lay. Mollesidda (approver) was seated at a greater distance from my brother." I am not sure if she meant to say that at the time when the throat was being cut by the 2nd accused, the approver and the 1st accused were seated so far away. If the events were narrated by her in the order of their sequence, she presumably meant to say so. In that case her version is quite opposed to that of the approver, and does in my opinion cut at the very root of a vital part of the prosecution story. If on the other hand the two events were observed by her at different points of time, then she

must

must have seen the 1st accused and the approver holding the limbs of the deceased when the 2nd accused was engaged in cutting the throat. It is impossible that if she saw one of the 3 persons in the act of committing the murder. She could have omitted to see the other two; and yet she does not say she saw the other two helping the 2nd accused, when the latter was engaged in the act.

Narasamma was the next witness examined for the prosecution. She admits that when she was awakened by Lakkamma at about midnight she saw the two accused and the approver standing in the padsala and that the dead body of Narasa Hanuma was placed on a ladder. She also admits that she and Lakkamma were both pushed in by the 1st accused and the door was closed against them. She could not, therefore, have been an eyewitness either of the murder or of the transport of the corpse. She stated that she did not see what had happened to the deceased and that only knew that he was dead; but she added that the two accused and the approver carried the corpse and that she saw it. How could that be? She stated first of all that she did not know who cut the throat of the deceased, that she did not see what each accused did for the part that the approver took. Then the public prosecutor read out her deposition given before the committing magistrate and asked her if she did not make a statement to that effect. Then she deposed as follows:--"I did make a statement before the lower court as mentioned therein. I now say that the 2nd accused cut the throat of the deceased with a knife.

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It was true that Mollesidda was holding the hands of the deceased. I did say that the 1st accused was holding the legs of the deceased. The knife article I does not belong to us. I do not know what what knife the deceased was killed. I did tell the magistrate that the accused on being questioned why they murdered the deceased, pushed me and the previous witness (Lakkamma) in the house. What I deposed then is true. I swear that I saw all these events with my own eyes. I am not tutored by any one! When I first made my statement here I forgot(!) What I had stated in the lower court." Note. -- The witness laughs occasionally and does not appear in the least concerned about the 1st accused being in trouble. After all this cross-examination by the public prosecutor was over, the advocate for the defence commenced his cross-examination and elicited from the witness that she saw that the 2nd accused was seated near the head of the deceased, her husband near his feet and that the approver was holding the hands of the old man sitting to his right, while the 2nd accused was cutting the throat of the deceased with a knife. This gruesome narrative of the events is repulsive enough to hear, but to this young woman the sight was not horrible enough to draw out even a plaintive cry. She can not even say why she did not cry out or beat her mouth on seeing the old man murdered. Lakkamma said that it was dark in the padsala and that no lamp was burning there, but according to Narasamma there was a lamp burning in a niche in the padsala wall. If that was so why did Narasamma say

that

that when she removed the cowdung from the floor, where Narasa Hanuma lay it was dark and that she could not say if the cowdung was blood stained. In one breath she says that she did not find any blood on the floor and did not see any blood flowing from the wound in the neck of the deceased and in the next breath she says she removed the blood stained manure from the place. Where did the blood come from and how did the cowdung get soaked in blood? If after the woman were pushed in the door was bolted from outside, how did Narasamma manage to come out for the purpose of removing the blood stained manure soon after the accused and the approver carried away the deceased. According to Lakkamma the door was not unbolted by the 1st accused after day break, that is after his return from the place to which the body was taken for disposal. I find it difficult to reconcile the story as told by these two women and their statements have varied so considerably that, I think, it would not be quite safe to rely upon their evidence. Then comes the approver. At the inquest he was examined as a ~~new~~ near relative of the accused. His wife is a daughter of the brother of the deceased. He said he was unable to say how the deceased met with his death. At Dodballapur he was arrested with the other two accused at 10 P.M. on the 23rd March. Since then he remained in custody. Like the other two accused, he was also taken to Bangalore to get his confession recorded. The same magistrate that recorded the confessions of the other accused, recorded his confession also on the 28th idem. In the Committing Magistrate's Court,

before

before the examination of the witnesses was taken up, the prosecuting inspector suggested to the court that after tender of pardon to him under section 337 of the Code of Criminal Procedure he may be examined as a witness in the case. The reason assigned was that as the principal witnesses in the case were the sister and wife of the 1st accused, they might not be expected to be firm, particularly as to the sister was very dull unable to give a coherent narrative of what she observed. Pardon was given and the approver was examined as the first witness for the prosecution. His confession Exhibit P.1 recorded by the Second Class Magistrate of Bangalore was also put in as corroborative evidence under section 157 of the Indian Evidence Act. According to the decision of the majority of the Judges of the Madras High Court in the Ashe Murder, Letters Patent Appeal, the previous statement of an accomplice is legally admissible and may amount to corroboration of the evidence given by him at the trial, but the weight to be attached to it will vary with the facts of each case.

In the course of his examination-in-chief in the Sessions Court the approver stated as follows:-- "First accused came and woke me up. I asked Ranga what he wanted of me. He asked me to go with him for a talk(!) I then went with him to the house of Larasa Hanuma. The 2nd accused had come there by the time I went with the 1st accused. The deceased was asleep in the padsala. The 2nd accused asked me to hold the legs of the deceased --I asked him why he

spoke

spoke thus. He then asked me to hold the legs as he wanted to cut his throat-- The 1st accused also asked me to hold the legs of the deceased. I did as directed and requested the accused 1 & 2 not to meddle with me and that I would do whatever they asked me to do." Whatever may be the truth, the story as narrated above is too absurd to be believed. There is in the first place no suggestion whatever of any previous concert in the matter, on the other hand the evidence negatives it. What is the obligation he was under so as to tamely submit to the dictation of the other two accused and join readily, without a word of protest, in a horrible crime. There was no grudge whatever between the old man and the approver. The approver was not put under any physical restraint. There was nothing to prevent him from running away from the horrid scene. Even the outer door was not bolted from within, according to the evidence of Narasamma. The witness's attention was then drawn to his confession. The story given there in regard to his motive was different. There he stated that as soon as he entered the house of the deceased he saw the 2nd accused was holding a knife in his hand. The witness questioned what it was, the 1st accused then replied "you also catch I will pay you Rs100/- " and then the witness held the leg. While admitting that he made the statement as per Exhibit P.1, the witness resiled from it in the Sessions Court and stated:--"The 1st accused offered to pay me Rs100/-, when he asked me to hold the legs of the deceased. I said I did not want the

money

money and declined to catch hold of the legs. Both the accused then caught hold of me and I was terrified. I then consented to do whatever they asked me to do. I did not demand the 1st accused for Rs100/-."
His attenion was next drawn in cross examination to his former statement made in the Committing Magistrate's Court and he admitted that he told the committing magistrate that he was offered Rs100/- for holding the legs of the deceased when his throat was cut, but that he did not demand and the 1st accused did not pay. We have thus at least two versions if not three regarding his motive for joining in the murder. In the Sessions Court it is made out that he was terrorised into submission by the domineering will of the other accused. According to his previous statements the motive power that impelled him to obey was the offer of a reward of Rs100/-, which the hirer did not pay and the hired did not want to demand. One can hardly be said to corroborate the other.

Similarly on the theory of conspiracy no consistent account is given. In cross-examination at the trial the approver makes out that about 20 days before the murder he met the 1st and 2nd accused talking together in the kana, of the deceased and ascertained from them, that the 2nd accused was in need of Rs100/- for his marriage expenses and on the 1st accused suggesting that the amount may be borrowed from the deceased, the 2nd accused declined

to

to do so.and offered to kill him and that this proposal met with a ready response from the 1st accused. The approver detested the idea and advised them to forget the conversation at once as it was most improper to think of killing the old man. Apart from the fact that this theory is opposed to the suggestion contained in the prior confession Exhibit P.1 and in the examination-in-chief, of their being no previous talk of the murder, the story as told above appears to me incredible on the face of it. And if the part that the approver is stated to have taken on this occasion is true, it is hardly likely that he would have so readily consented or allowed himself to be so easily coerced into obedience, on the night of the murder particularly when he was called in to see the old relation of his who was stated to be far from well and talking incoherently. It may be noted that in the retracted confessions of the two accused, there is no suggestion of any conspiracy or preconcert before the date of the murder.

Then again the approver states that when he held the legs and the 2nd accused cut the throat of the deceased, Lakkamma was present and not Narasamma, but that is not what the women say.

For all these reasons I am unable to accept the approver's testimony as reliable. I am of course aware ofthe natural tendency of all approvers to make others more responsible than themselves, but it must also be remembered that the

approver

approver is giving his evidence on a conditional pardon and that naturally there will be an inducement in him to earn it. But the story as told by him is intrinsically improbable, and is not corroborated in material particulars by any independent testimony worthy of credit. Indeed as I have shown it is materially contradicted.

We are thus left to fall back on the confessions of the accused. Both have retracted their confessions in the Committing Magistrate's Court and at the trial and the 2nd accused puts forward a totally different story about the murder. The 1st accused as we have seen, was the principal man examined at the inquest. His confession is thus opposed to his first statement and his subsequent statements. The Sessions Judge himself is not disposed to attach much weight to these confessions for their own sake, and he only takes them into consideration for the reason that in his opinion they are corroborated in material particulars by Lakkamma, Narasamma and the approver. Taking the confession of the 1st accused first:--The apparent motive suggested is that Narasa Hanuma showed preference to his brother-in-law Venkatappa living at Kottigehosahalli and was enriching him, as the 1st accused thought, at his expense. He expostulated with the old man but was met with a rebuff. He was therefore enraged at the conduct of the old man and made up his mind to murder him. He hired the 2nd accused and the approver to assist him promising to pay a hundred rupees each and carried out his intention.

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The 1st accused is a man of Pennavalli and was apparently of independent means, as he was living there with his wife and sister until he was sent for. He did not voluntarily go to Holerahalli to take his abode with the old man. There was nothing in the conduct of the old man of the 1st accused to suggest any possible feeling of estrangement towards each other. Naturally the old man will not in these circumstances do anything which is likely to prejudice the material interests of the 1st accused. It is not shown that there was any reason for the old man to change his affection for his grand-daughter, or to bestow favours on his brother-in- law at the expense of those near and dear to him. If this story was true, the prosecution could easily have elicited corroborative proof from Venkatappa; they have failed to do so. One important link of the prosecution story contained in the confession of the 1st accused --a link that furnishes motive for the crime so far as the 1st accused is concerned stands thus uncorroborated. The motive suggested in the deposition of Narasamma and the police inspector is that the 1st accused was in too great a hurry to possess himself of the cash and jewels kept buried underground by the deceased and therefore compassed his murder. It is sufficient atthis stage to state that there is nothing in the confession of the 1st accused to lend support to it. Lower down in the same confession it is to be found that the 1st accused prayed that the jewels worth Rs400 or 500 brought from the house by the police may be restored to him. This statement does not strike me as coming voluntarily from one who out of contribution made a confession of his crime aware of what the consequences of such a con-

confession on him would be.

With reference to the confession of the 2nd accused in so far as it has to be taken into consideration in regard to the guilt of the 1st accused, it is worthy of note that he tries to minimise the part he took. He states:--"Malliga(meaning the approver) caught hold of Narasa Hanuma's legs. I first caught hold of his hands, and Rangiah placed his legs on the chest and cut the throat holding it by the head. He cut it with a knife." The 1st accused and the approver make out that it was the 2nd accused that cut the throat. In the Committing Magistrate's Court, after all the witnesses for the prosecution had been examined and with the full knowledge that the approver had implicated all the three persons, he has absolved the 1st accused altogether. In his appeal memo presented to this court through the Jail authorities,--he reiterates that the 1st accused is innocent and had no hand whatever in the murder. In the lower courts he was awaiting his trial and it is perhaps more likely that he would there tell a false story, but now that he is tried and sentenced to death and knows his own fate why should he strive to save ~~xxx~~ not onlythe 1st accused, but the very man, I mean the approver, who gave evidence in two courts against him. I am free to confess that it has made some impression on me in favour of the possible innocence of the 1st accused.

In the view I have taken, namely, that the

deceased

deceased could not have done any act to the material prejudice of the 1st accused and his wife it is not easy to account for the unnatural haste which he is stated to have exhibited for getting into the possession of the cash and jewels belonging to the deceased. Assuming that suddenly he developed an avaricious intention to get at the buried money and jewels could he not have achieved his object without going the length of murdering the old man? One does not ordinarily think of having recourse to murder, if by other means his object can be achieved. It may be that we are unable to dive deep into all the springs of human action. But it seems to me that when it is so easy to remove from the place or places of burial, during the absence of the deceased from the house, with less risk of being detected, it is against human nature especially for one bearing no grudge against the deceased, to murder him. Assuming again that for some unaccountable reason the 1st accused had resolved upon murdering the deceased, would he do it himself and in his house when he could more easily have got it done by the hired assassins elsewhere. It is in evidence that the old man was going out to shandies and returning after night fall. It is easy to waylay and murder him on such occasions at a lonely spot with considerably less risk: By selecting the house for committing the murder there is the further risk of being found out and surprised in the act by the two women in the house. The natural instinct or impulse of a woman on seeing a horrid crime committed before her eyes, especially when the victim happens to be one dear to her, will be to scream out and to raise a hue and cry. In the case of

Parasamma

Narasamma it will be more so than in the case of Lakkamma. It is difficult for me to believe that the women also were privy to the murder. Lastly there is the risk of attracting the attention of the neighbours at the time of the murder and of the passers by during the transport of the corpse from the house to the halla.

Next if the murder took place in the house and in the manner described, there should be a pool of blood in the room and the clothes and bedding of the deceased would be saturated with blood. On the clothes of the murderers also, particularly the 1st and 2nd accused who are stated to have been sitting near the injured throat, blood would have spurted out. The story that all the blood on the floor was removed in the dark by the use of cowdung manure, or that such a large quantity could be so removed does not appear to me to be easy of acceptance. It is not easy to obliterate all the traces of blood by the means said to have been adopted. It is said that the cowdung thus soaked in blood was thrown into the manure heap in the hithal. The police were unable to find any blood stained manure in the thippe. It is not stated that any manure was removed from the thippe in the interval. The absence of large patches of blood on the bedding and clothing of the deceased is sought to be accounted for, by their removal beforehand. Though on this point there is variation between the evidence of the women and that of the approver, it appears to me to be unlikely that the old man, even if he had smoked bangi, could have been so far insensible as to allow all his clothes being

removed,

removed, his hands and legs held fast and one person to be mounted on his chest before the knife was applied to the neck, without any cry or struggle. There is no evidence that any of the clothes of the accused or the approver worn at the time of the murder was found blood stained. In the face of so many improbable circumstances I find it difficult to believe that the murder could have been committed in the houde of Narasa Hanuma.

The Sessions Judge says that there is ample evidence that the 1st accused made a show of search and discovery on Friday following the date of the murder. As far as I have been able to see there are two only places in which a reference is made to this aspect. One is Exhibit D.5 of which I have already taken sufficient notice. The 2nd ~~xxx~~ is the confession of the 2nd accused. The 2nd accused does not say that he accompanied the 1st accused in his searches. Moreover it appears to me that if the 1st accused had a hand in the murder and the disposal of the corpse in the halla he would not have been in a hurry to discover the body himself. He would naturally to ward off suspicion attaching to his conduct, pretend to search in places other than the one where the body was deposited. He would not be in a hurry to communicate the fact of his discovery to the patel or get him to send a report.

About the discovery of the clothes in consequence of information furnished by Lakkamma we have to depend on the testimony of Jamedar Naranappa assisted at that time by the patel and Veerabhadrappa. The

patel

patel was suspected to be screening the 1st accused in the jamedar's report Exhibit P.5. The halla in which the corpse was found is on the land Survey No. 23 belonging to the patel. The patel would, in such circumstances, be not unwilling to help the jamedar in the pursuit of a theory conducive to the removal of suspicion attaching to his own conduct. Veerabhadrayya was the police informant. There is the further fact that according to the evidence of Lakkamma given in the Sessions Court, she could not have observed the 2nd accused taking the clothes of the deceased. Her statement that she saw is inconsistent with her own testimony. The second accused in his confession Exhibit P.12 says that he handed over the concealed articles (the knife, turban, hatchada, and panchay) to the Amildar and Inspector. He states there:--"Ranga then went to the ditch saw there and then informed the Gowda. Then the amildar, inspector and others came and asked me, 'what Thalwar how did this happen?" Then I told them how it occurred and gave away all that I had kept concealed." In the 2nd accused's statement given before the committing magistrate he states that he gave Narasa Hanuma's clothes to the police inspector." In the Sessions Court, however, he states that his father produced articles 4 & 10, but in the same breath adds that his father was an ignorant person and that the patel Veerabhadrappa and the police had tutored his father and made him say so. What this means has not been made clear. In the appeal memo presented to this court the 2nd accused again says that he took the clothes and placed them in his house and when the police came and asked him he gave the clothes to them.

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approver does not make any reference to the clothes in his evidence given at the Sessions trial. If the 1st accused had a hand in the murder, he would have thrown the clothes also with the corpse. The prosecution credit him with a great deal of cleverness and hypocricy, with the power of imposing his will on his guilty associates and influencing their views. In the face of all these circumstances I am not prepared to accept the theory that it was in consequence of Lakkamma's information that the clothes were found. I need hardly add that the consideration of this case has cost me much serious and anxious thought. The evidence is inherently improbable and inconsistent with the probabilities of the case. The approver's evidence is not sufficiently corroborated. The motive for the murder is not sufficiently strong and impelling. On the materials before me I feel I ought not to find the 1st accused guilty. I accordingly allow his appeal, acquit him of the offence of murder with which he is charged, and direct him to be set at liberty.

With reference to the 2nd accused I have no reason to believe that he is not guilty. He admits in his statement before the committing magistrate, that he was present at the time of murder and that he held the legs of the deceased. The allegation that the patel had criminal intimacy with Narasamma rests on mere suggestions unsupported by any evidence.

The

The theory that the patel and Veerabhadrappa are the murderers is one resting as it does on the mere suggestion of the 2nd accused is unacceptable. But as the 2nd accused admits throughout that he was present at the murder and as the clothes of the deceased proved to have been worn by him before his death came from the custody of the 2nd accused I cannot say that the finding of the lower court in regard to his guilt is wrong. I accordingly confirm the conviction and sentence so far as the 2nd accused Venkata is concerned and dismiss his appeal.

(Sd) C. S. Dorasswami Iyer

J U D G E.

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The Chief Judge.

Even putting aside entirely the retracted confessions of the 1st and 2nd accused, we have strong direct evidence, in the statements of the approver Kolle Sidda (prosecution 2nd witness) and the women Lakkamma and Narasamma (prosecution 3rd and 4th witnesses), pointing indubitably to the said accused persons along with the approver as the persons who murdered Narasa Hanuma. I find it extremely difficult to believe that these three witnesses have been tutored to give false evidence in order to cause the 1st and 2nd accused to be convicted of a capital offence - the only alternative to such a theory being to accept their evidence as in the main true and reliable, subject to the usual rules and safeguards as to the appreciation of evidence.

The deceased was an elderly man without wife or children. His brother's son whom he had with him for some time went away somewhere ; and he therefore kept with him since 1 ½ or 2 years the 1st accused and his wife Narasi (prosecution 4th witness) who was the daughter of the brother's son aforesaid, and also Lakkamma the 1st accused's sister (prosecution 3rd witness). Narasa Hanuma had money dealings and was possessed of cash, jewels and documents, which he kept buried in the cattle shed and other parts of his house ; and there is nothing improbable in the assertion of the 1st accused in his confessional statement of the 28th March 1919 (Exhibit P 10) that he got angry because the old man denied his (1st accused's) right to question his disposal of his effects. There is no evidence that the 1st accused had

had any independent income of his own ; the very fact that he was glad to remove himself with his wife and his widowed sister and her child wholesale to the roof of Koruma Kunuma would suggest that he could not have much independent property to live upon. At any rate no other person than the 1st accused stood to gain by the murder of the old man ; and as a matter of fact there is evidence that he dug up the cash, jewels etc very shortly after the murder and concealed them in other places, where they were pointed out by him to the police. See evidence of prosecution 4th witness as to the removal by 1st accused and that of prosecution 5th witness as to finding 2 holes newly dug up and filled with fresh earth.

It will be worth while to consider, even if somewhat cursorily, the circumstances attendant on the discovery of the dead body. Koruma Kunuma is known to have been alive on Wednesday afternoon the 19th March 1919 ; prosecution 11th witness swears he had seen him that day at about sunset, while the 1st accused's case unsupported by evidence and in contradiction with his confession is that the old man who went to Hojjagi shandy that afternoon did not return. His mangled and mutilated corpse was pointed out by the 1st accused to the patel (or rather the patel's son Subbaraya Gowda prosecution 8th witness) on the following Friday afternoon the 21st March ; it was then lying in a dried up hollow or ditch, 8 ½ feet deep by 10 or 15 feet wide, and situated some 38 feet away from the pathway leading to Rampura from Kolerahalli the the deceased's village. Three inferences may safely be drawn from the various indications present. First, death could not possibly have been due to mere accident, but was the result

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in all probability of brutal violence. Thus, according to the inquest report, the trachea had been completely cut for a length of about 4 inches along with the blood vessels; the skin over the larger part of the face had been cut and removed; the right lobe of the ear had been cut away; the sockets of both eyes were found broken at the outer sides; the nasel bones were found broken to pieces; the ramus of the left lower jaw was broken; the left clavicle was broken at its middle on the right side; and a number of ribs were broken on both sides. The medical opinion is decisive that death was due to the injuries noted; and the Sub Assistant Surgeon adheres to the view that they must have been inflicted by sharp and blunt instruments, a view which seems supported by the nature of the injuries. The second inference, based on the entire absence of blood marks any where in the hollow, apart from some foul liquid oozing out from below the mouth of the corpse, is to the effect - herein tending to probablise the direct evidence materially, that the murder must have been committed elsewhere, the dead body having been thereafter removed and thrown into the hollow. Thirdly, mere casual robbery by a wayside thief could not have furnished the occasion for the murder, seeing that most of the jewels worn by Narasa Hanuma while alive were found intact on his dead body, whereas the clothes and the jatti muras in one ear were missing.

On the other hand, there is not the slightest evidence that the old man had any enemies who were actively interested in taking away his life. No doubt the second accused Venkata has come forward before the Committing Magistrate with a story that Subbe gowda or Subbaraya Gowda the

Patel's

patel's son (prosecution 3th witness) was keeping the 1st accused's wife Narasamma, and had a quarrel with Narasa Hanuma on that account, and it is suggested that Subbaraya Gowda may have done away with the latter in consequence. Subbaraya Gowda, Narasi and Lakki distinctly deny the alleged intimacy; nor has the 1st accused alluded to it at any time prior to his memorandum of appeal to this court. The father of the 2nd accused, who was examined as prosecution 9th witness, has stated in cross examination that the patel (meaning thereby Subbaraya Gowda) was on visiting terms with Narasa Hanuma, and was not quarrelling with the latter, and that his visits were to the old man and not to the woman Narasamma. If Subbaraya Gowda was on inimical terms with the deceased and the 1st accused, and there was the least ground at the time for suspecting his complicity in the murder, it was scarcely likely that the 1st accused would have gone straight to such a person to make a report as to the finding of the corpse, or that that person would have contented himself with passing on the information to the police just as he had received it. I have very little doubt that the 2nd accused's story in question is false in its essentials, intended by the 2nd accused to save the 1st accused, and to bring into trouble Subbaraya Gowda to whom or to whose father he owes money, and whom he probably suspects to have had a hand in bringing him into trouble. The story, again, is entirely opposed to the confessional statement given by the 2nd accused before the 2nd class Magistrate on the 28th March 1919; and it is curious as well as significant that he seeks to implicate not only Subbaraya Gowda but also Veerabhadrayya, the local sivachar merchant

and

and police informant who was helping the police in the course of the investigation. Of course there is not the slightest motive suggested or proved why Veerabhadrayya should join the conspiracy against the deceased the old man.

Now the 2nd accused pretends that, though he mentioned Subbaraya Gowda and Veerabhadrayya, the Police Inspector and Jamadar advised him not to speak against them as they were family men but to implicate the approver Molle Sidda and the 1st accused Langa. He seeks at the same time to make out that, though he was present at the murder, he took no part whatever in the crime beyond holding the legs of the deceased while he was struggling, - a circumstance which is itself sufficient to discredit his story, since it was not very likely that His services would in that case have been sought by those who wanted to get rid of Narasa Hanuma. His further assertion that the old man's throat was not cut but that he was merely killed by a big round stone thrown on his head by Subbaraya Gowda, is quite opposed to the indications of the post mortem examination, and is itself sufficient to stamp his story as a deliberate and barefaced invention.

On the whole I am clearly of opinion that the wicked and malicious falsehoods put forth by the 2nd accused ought not to make the slightest impression upon our minds as regards the innocence of the 1st accused, his employer, whom he is evidently endeavouring to save from trouble, - a reason which accounts sufficiently also for his attempt to explain away the approver's evidence by alleging that the latter had nothing to do with the murder.

As soon as the 1st accused mentioned to the patel's

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son on the 21st March that his "grand-father" Narasa Hanuma's corpse was lying in the hollow, that individual sent a report of the fact (Exhibit P 4) to the Police Jamadar of Dodbelavangala, and the latter sent on that report to the Police Inspector of Dodballapur with a report of his own (Exhibit P 5) in which was mentioned certain information which he had ~~xxx~~ received as he says "from the people here" to the effect that the 1st accused Ranga and others had murdered the deceased on the night of the 19th March out of anger that he would alienate his properties and that the alleged fall into a wayside ditch was false. The Jamadar's report was despatched at 12 0' clock at night and reached the Inspector the following morning at 6-50 A.M. I find it rather difficult to believe the suggestion that the report was not sent as asserted, but was subsequently introduced into the records by the Police; no useful object could, as far as I can see, be served by such an introduction, and the Jamadar's report is in fact no part of the material upon which the prosecution relies for a conviction. I see nothing, after all, very strange or surprising in the Jamadar receiving information of the kind embodied in Exhibit P 5; an intelligent and wide awake police officer with his ears open ~~if~~ is often in a position to receive floating information likely to be useful in the course of the investigation; and this particular Jamadar struck me while in the box as rather a shrewd and resourceful person and much better fitted to handle a difficult case than the Taluk Inspector. He is evidently unwilling to reveal the source of his information, and under the law we cannot of course compel him to divulge the name of his informant. Beyond the fact that it cannot be the patel or the shanbhog, whom indeed he accuses in Exhibit P 5 of making a false ~~xxxx~~ report "after consideration", that is to say, deliberately,

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we are after all not particularly concerned with finding out who the Jamadar's informant may have been.

The really important thing in that case is the fact that it was the 1st accused's sister Lakkamma (prosecution 3rd witness) who, on the evening of the 23rd March, furnished the police with information which directly led to the arrest of both the accused persons and Polle Sidda the same night, and to the tracing the next day of the 2nd accused's house of clothes belonging to the deceased and worn by him last, namely a turban (article 10), a dupati (article 4) and a panche (article 3) - the two last stained with mammalian blood - and their recovery from places of concealment. The discovery of the clothes is a particularly important circumstance, as its truth is admitted by the 2nd accused, who has however not explained how information about the same reached the police otherwise than through Lakkamma. If on the other hand as is alleged and as I believe to be the case, the informant was Lakkamma, then it shows beyond a doubt that she must have been in a position to give definite and detailed information regarding the occurrence, information based upon direct knowledge a circumstance which adds materially to the weight to be attached to her testimony.

It is fairly clear that Lakkamma and Narasamma are both somewhat unwilling witnesses; at any rate their statements do not read as if they wanted to favour the prosecution at the expense of the accused persons, and particularly of the 1st accused; on the contrary, several of their answers and some of the apparent inconsistencies therein point to a decided leaning on the part of the witnesses towards the 1st accused, who is the uterine brother of the one witness and the husband of the other. The statements of these witnesses in

in the Court of Session are in fact less favourable in some respects to the prosecution than those made before the Committing Magistrate, and it is only for instance after Narasi was confronted with her earlier statement before that functionary that she admitted the truth of the particulars mentioned therein. It does not however follow, because they are somewhat unwilling witnesses, that they are untruthful witnesses who simply repeat what they have been taught by the police to say. If this were so, we should have expected them at least in the Court of Session when they had no longer anything to fear from the police, and when the accused persons had already resiled from their own confessions, to repudiate their earlier statements, at least so much of the same as tended to incriminate the 1st accused. Instead of this we find that they adhere substantially to the version already given by them. This I think is because it is more or less the true version, or the version which comes nearest to what they can be expected to speak to; for it is usually easier for a witness - especially a dull witness like Lakkamma - to stick to the truth especially after it has been once uttered than to invent an inconsistent untruth and thereby land himself in difficulties of all kinds. The few inconsistencies that are noticeable in the statements of the women witnesses are not, after all, very material ones, and may be accounted for by the natural impulse on their part to affect ignorance of the 1st accused's design to kill an inoffensive old man and appropriate his money, and to pretend to have been shocked at the sight of the cold-blooded murder. I certainly do not believe, and there really is no warrant for suggesting, that the women were in league with the 1st accused to take away the life of the old man who was harbouring them; on the contrary, their

their disapproval of the atrocious act of the 1st accused may be a reason why they have come forward the more readily with the truth. At the same time, however, it is not very easy to believe that either Lakkamma or Narasamma the only inmates of the house at the time, could have been kept altogether ignorant of the intentions of the murderers; though they may not have looked with favour upon these intentions. They came along with the 1st accused to live with Narasa Hanuma a little over a year previously, and I do not know why we should assume that they became so much attached to the latter that they were willing to risk their own lives and at the same time bring their new relative the 1st accused into serious trouble by crying out when they saw the old man being murdered or by running to his help. Their evidence, moreover, is to the effect that Narasa Hanuma was already dead when they saw him, so that no intervention on their part would have been of any avail. There is some difference between the two witnesses as to whether they did cry out or not; I am inclined to believe Narasi's statement that they did not cry out in preference to Lakki's statement to the contrary, especially as the women, if they were really shocked at the sight and were bent on calling out for help, could not have been prevented from doing so merely by being pushed into the nadumane by the 1st accused. It is however unnecessary to speculate further on the state of mind of the witnesses.

Lakkama swears that she was awakened by a gurgling noise, that in the padasala she saw Narasa Hanuma lying on a ladder with his throat cut, and that both the accused persons and Molle Sidda were seated there. At first she deposed that she saw the 2nd accused cut the throat of the deceased; but in cross examination she said she did not actually see this, but only inferred it from the fact of the

corpse being placed on the ladder. This qualification that she introduces makes no particular difference to the conclusions as regards the probable course of events that must be drawn from her evidence if that evidence is true in the main. Narasi, on the other hand, who was awakened by Lakki at midnight, says that she saw the 2nd accused and the approver in the padsale, that Narasahanuma was dead, and his dead body placed on a ladder, and that all the persons including her husband the 1st accused carried away the dead body. Confronted with her statement before the Committing Magistrate, she admits that the 2nd accused and Mollesidda murdered Narasahanuma, that the 2nd accused cut his throat with a knife, and that the 1st accused was holding the legs. She admits having removed some cowdung manure in the dark, but does not know if it was blood-stained, and professed to be unable when asked by the police to point out the manure. This does not look as if she has been tutored by the police to give false evidence. If she and the police were conspiring to falsely implicate the 1st accused, it would not at all have been difficult to so arrange matters that the witness could point to some cowdung manure stained with mammalian but not necessarily human blood, as that which she removed at night. Instead of this, the police inspector (prosecution 5th witness) states that the contents of the manure pit were examined, but that no blood stained cowdung could be found in it. It is just possible that the cowdung may have been thrown elsewhere and that the woman Narasi is not willing to point out the spot; and here it is not unimportant to remember that, according to the evidence of the Police Inspector, Narasi was not disposed to give any information when questioned on the 22nd March, and that she only came out with information concerning the murder on the 25th March some days after Lakkamma had furnished details to the police. The Sessions Judge has,

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I find, made against Narasi's deposition the note that " the witness laughs occasionally and does not appear in the least concerned about the 1st accused being in trouble". I would not attach the slightest importance to this note as affecting the credibility of the witness, seeing that women often give way to hysterical laughter when placed in difficult situations and that excessive shyness or self-consciousness may give rise in individuals of both sexes, to silly fits of laughing or smiling in the attempt to control their feelings.

My conviction as to the general reliability of the testimony given by the two women witnesses is materially strengthened by a consideration of the evidence given by the approver. The latter is related to Narasanhanuma by marriage, as the 1st accused also is; and he, the 1st accused and the 2nd accused went to Dodballapur in charge of the corpse on the 22nd March. He was implicated by Lakkamma along with the two accused on the 23rd evening, and was thereupon arrested simultaneously with the. I have already referred to the material substantiation that Lakkamma's information received in the fact of the recovery of deceased's clothes from the house of the 2nd accused. But an even stronger element of corroboration consists in the fact that on the 28th March all the three persons whom she implicated unreservedly confessed their crime before the Special Second Class Magistrate of Bangalore. It is true that the 1st accused has since withdrawn his confession entirely, and that the 2nd accused has given to his confession a twist manifestly intended to benefit the 1st accused; but Mollesidda has throughout adhered to the version, that he first gave on the 28th March 1919 (Exhibit P.1), and which there is no valid reason (upon the evidence as it stands) to attribute either to threats, ill-treatment or inducements at the hands

of

of the police. Of course, an approver's evidence is from the nature of the case tainted evidence, and requires to be scrutinised before it can be safely accepted; but in this respect Mollesidda's evidence is not worse off than that of any other accomplice. It is, as regards corroboration in material particulars, on a much higher level than the generality of approvers' statements; for we have, first, the sworn testimony of Lakkamma and Narasamma, who cannot possibly be suspected of ill-will towards the accused persons; next, the confessions of the accused persons themselves, which, though retracted in the Court of the Committing Magistrate, were in my opinion voluntarily made and seem to be in the main true enough where they implicate the authors of them; and, lastly, the confession of the approver (Exhibit P.1) made at a time when he could have had no reason to expect an offer of pardon.

No doubt Mollesidda wants it to be believed that he did not join the conspiracy of his own accord but was drawn into it by the pressure of the 1st accused. But this kind of pretence, intended to save one's face, is by no means unusual on the part of witnesses: nobody likes to say, if he can help it, that he was a party to a diabolical murder for no better reason than a mercenary one; and in the present case there is no suggestion that Mollesidda was actuated by any stronger motive. According to his confession, Exhibit P.1, he was taken by the 1st accused Ranga to Narasahanuma's house on the night of the murder, and offered Rs. 100/- if he would hold the old man's legs, and he agreed to this and held the legs accordingly. It is certainly most difficult to believe that that was the first conversation between the 1st accused and the approver with regard to the contemplated murder; but the offer of a definite sum, at least a sum as large and substantial as Rs. 100/-, may have been made for the first time

when the 1st accused had everything ready for carrying out his murderous design, and the approver's behaviour when the offer was made (judging from his own account of it) does not suggest that the 1st accused could have had any doubts about being able to secure his help at the proper time. It appears from Mollesidda's evidence as approver before the Committing Magistrate that 15 or 20 days prior to the date of the murder, the 1st accused had told him that the 2nd accused was willing to kill Narasahanuma if paid Rs. 100/-, and promised to pay him Rs.100/- if he would also help in the matter; he qualifies this latter statement by saying that the promise was made on the date of the murder, and even after the murder was committed, which last of course could hardly have been the case. In his evidence before the court of session, Mollebidda admits that about 20 days prior to the murder he was aware of the intended murder; he says he heard the two accused persons conversing long, and found that the 1st accused had agreed to the 2nd accused's proposal to kill the old man because he wanted Rs. 100/- for the expenses of his marriage. The approver pretends that he made a sort of remonstrance when the idea of murder was broached; but the remonstrance was evidently a very feeble one, for as soon as he was asked to hold the legs of the deceased, he did so, the 1st accused thereupon catching hold of the hands, while the 2nd accused seized the neck and cut the throat with the knife Article No.1. No doubt he adds in the Sessions Court that when the 1st accused offered to pay him Rs. 100/-, he said he did not want the money and declined to catch hold of the legs but that when both the accused persons caught hold of him he was terrified and consented to do whatever they asked him to do and so on and so forth; but this is the sort of prevarication which as I have already observed, silly witnesses sometimes indu

indulge in to save their face and which cannot mislead a person of average shrewdness in the task of separating truth from embellishment. I do not think the witness' statement that he did not demand the 1st accused for the hundred rupees promised introduces any inconsistency whatever; for there was hardly time for the promise to be fulfilled before the police came upon the scene and the conspirators themselves were taken into custody.

The evidence in the case, read as a whole, does not produce any impression of improbability on my mind. The 1st accused, who has transferred himself to Narasahanuma's roof with his entire family, must have done so with the object of eventually stepping into the properties of the latter but he soon found that the old man was not prepared to place himself unreservedly in his hands (Cf. on this point his confession Exhibit P.10 and the statement of Venkatappa Prosecution 11th witness before the Committing Magistrate not examined in the Sessions Court), and he accordingly formed the design of murdering Narasahanuma and disposing of his dead body, and appropriating his effects. Whether he could not have accomplished his object otherwise than by murdering the old man, and whether it would not have been less risky to commit the murder in some place other than the man's residence, are points upon which it is hardly profitable to speculate with any advantage unless we can place ourselves in the position of the 1st accused -- the person chiefly concerned -- and can have access to all the feelings and considerations that must have entered into his calculations. There are obviously innumerable conditions in which murder is the only ready mode of appropriating the victim's effects; and often too, a murder committed at the house of the victim at dead of night in the presence of

but the confederates of the murderer and persons directly interested in him is a safer and more certain method of compassing the object in view than prowling about with hired assassins on the off chance meeting the victim alone in a solitary spot. I have already expressed the view that the women who were the only other inmates of the house were not in a position to actively interpose for the protection of Narasahanuma, even if they were disposed to do so in opposition to the 1st accused; and I am inclined to think that the actual conditions at the time of the murder were nearly ideal conditions for the purpose in view. The evidence also shows that the murderers had taken all possible precautions to remove every trace of their crime. The dupati, cumbly and panche of the deceased were removed before 2nd accused cut his throat, so as to try to obviate blood stains; and the same accused (who it will be borne in mind, is the village talari and a madiga accustomed to cut up and handle animal carcasses) had previously put cowdung manure all round the deceased, so that the blood which flowed from the neck became soaked in the manure; and this blood-soaked cowdung manure was thereafter collected by Narasi and removed to some place which she could not or would not subsequently point out to the police. The body was itself removed at dead of night on a ladder; and the village being a very small one, there was hardly any risk of the act being detected. The body, was thrown into a hollow situated several yards away from the public pathway on a private holding, and so not readily discoverable. The removal of the clothes and the disfiguration of the facial appearance of the corpse were no doubt intended to obliterate traces of identity. So far, everything favoured the murderers. But, unfortunately for them, the disappearance of the old man could not be kept concealed indefinitely; in

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fact, the first accused did the right thing from his point of view in waiting for a couple of days and then pretending to have discovered the body in the hollow and inducing the patel to send a colourless report to the police to the effect that his grandfather Narasahanuma "had fallen into a hollow by the side of the path and died;" for, if he had failed to make pretence of a search, nothing could have tended to draw down a suspicion more certainly upon himself. The evidence of Prosecution 10th witness, the elder brother of the approver, is significant in that it shows that the 1st accused wanted the witness to speak to the Jamadar and hush up the matter; but the witness was not confident of his powers of persuasion, and, unluckily for the 1st accused, there was talk of foul play possibly, the sister of the 1st accused, a somewhat stupid woman, began to gossip,-- and the matters reached the ears of the intelligent Jamedar, and as it so happened the latter took an active part in the investigation, and elicited the truth from Lakkamma with disastrous consequences to the persons concerned.

I have very carefully and anxiously weighed the evidence, but feel no room for reasonable doubt that the 1st and 2nd accused, with the help of the approver Mollesidda, murdered the deceased. I therefore affirm their convictions and the sentence of death passed upon each of them by the Sessions Judge, and dismiss their appeals accordingly.

(Sd) K. S. Chandrasekhara Aiyar

CHIEF JUDGE.

"True Copy"

Deputy Registrar

SR.& AV.